

Confirmation No. 3460

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant:	Voois <i>et al.</i>	Examiner:	Shingles, Kristie D.
Serial No.:	09/597,704	Group Art Unit:	2444
Filed:	June 16, 2000	Docket No.:	8X8S.249PA
Title:	COMMUNICATIONS CONTROLLER AND METHOD THEREFOR		

APPEAL BRIEF

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Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Customer No. 40581

Dear Sir:

This Appeal Brief is submitted pursuant to 37 C.F.R. § 41.37, in support of the Notice of Appeal filed April 7, 2010, and in response to the rejections of claims 1-27 as set forth in the Final Office Action dated November 20, 2009, and the Advisory Action dated March 16, 2010.

Please charge Deposit Account No. 50-0996 (8X8S.249PA) \$540.00 for filing this brief in support of an appeal as set forth in 37 C.F.R. §1.17(c). If necessary, authority is given to charge/credit Deposit Account 50-0996 additional fees/overages in support of this filing.

I. Real Party In Interest

The real party in interest is 8x8, Inc., having a principal place of business at 810 W. Maude Avenue, Sunnyvale, California 94085. The above-referenced patent application is assigned to 8x8, Inc.

II. Related Appeals and Interferences

While Appellant is aware of other pending applications owned by the above-identified Assignee, apart from the file history of the instant application, Applicant is unaware of any related appeals, interferences or judicial proceedings that would have a bearing on the Board's decision in the instant appeal.

III. Status of Claims

Claims 1-27 stand rejected and are presented for appeal. A complete listing of the claims under appeal is provided in an Appendix to this Brief.

IV. Status of Amendments

No amendments have been filed subsequent to the Final Office Action dated November 20, 2009.

V. Summary of Claimed Subject Matter

As required by 37 C.F.R. § 41.37(c)(1)(v), a concise explanation of the subject matter defined in the independent claims involved in the appeal is provided herein. Appellant notes that representative subject matter is identified for these claims; however, the abundance of supporting subject matter in the application prohibits identifying all textual and diagrammatic references to each claimed recitation. Appellant thus submits that other application subject matter, which supports the claims but is not specifically identified above, may be found elsewhere in the application. Appellant further notes that this summary does not provide an exhaustive or exclusive view of the present subject matter, and Appellant refers to the appended claims and their legal equivalents for a complete statement of the invention.

Commensurate with independent claim 1, a user-programmable communications arrangement includes a user interface and a programmable controller, for use in an IP telephony system in which a control center is communicatively coupled to a plurality of IP telephony devices (*see, e.g.*, 412 in FIG. 4 and at pages 11:21-12:13). The user interface displays IP telephony configuration options for at least one of: user control of an IP telephony device, office telephone administration control of a plurality of telephony devices, and system administrator control of telephony system configuration (*see, e.g.*, 414, 415, 416, 431 and 432 of FIG. 4 and at page 12:5). The programmable controller is programmed to, in response to a user selecting one of the configuration options, program the control center and a computer processor circuit at each of the plurality of IP telephony devices, and to control communications between the control center and the plurality of IP telephony devices. *See, e.g.*, 405 of FIG. 4 and at page 12:8.

Commensurate with independent claim 15, other example embodiments are directed to a user-programmable communications arrangement including a user-interface device and a programmable CPU. *See, e.g.*, 412 and 405 of FIG. 4 and pages 11:21-12:13. The user-interface device includes a display, and is programmed to provide IP telephony communications configuration information to a user via the display and to communicate IP telephony communications configuration selections from the user to a CPU. The programmable CPU is communicatively coupled to the user interface device and includes an OOP interface coupled to an IP telephony communications link (*see, e.g.*, 402 of FIG. 4 and column 12:3). The CPU is programmed to receive the IP telephony communications configuration selections from the user-interface device and, in response to the received selections, programmably configure selected IP telephony devices of an IP telephony communications system via the IP telephony communications link. *See, e.g.*, 412 and 405 of FIG. 4 and pages 11:21-12:13.

Commensurate with independent claim 20, a user-programmable communications control system controls a communications network using OOP code, and includes a plurality of telephony devices, a computer station, and a programmable communications server (*see, e.g.*, system 400 of FIG. 4 at columns 11:21-13:18). The plurality of telephony devices are coupled to an IP communications link and configurable to communicate IP telephony data

(*see, e.g.*, 414, 415, 416, 431 and 432 of FIG. 4 and at column 12:5). The computer station has an OOP interface and is programmed to display communications information including telephony communications information and to provide communications control selections including telephony control selections to the IP communications link (*see, e.g.*, 412 of FIG. 4 and column 12:5). The programmable communications server includes an IP telephony switch and an OOP interface coupled to the IP communications link and programmed to receive the communications control selections (*see, e.g.*, 405 of FIG. 4 at columns 11:21-13:18). The programmable communications server is also programmed to control the communications network and configure a computer processor circuit at each of the plurality of telephony devices, responsive to the selections received through the OOP interface (*id.*).

VI. Grounds of Rejection to be Reviewed Upon Appeal

The grounds of rejection to be reviewed on appeal are as follows:

1. Claims 15-19 and 26 stand rejected under 35 U.S.C. § 103(a) over Edholm (U.S. Patent No. 6,449,269) in view of Swartz (U.S. Patent No. 6,445,694).
2. Claims 1-14, 20-25 and 27 stand rejected under 35 U.S.C. § 103(a) over Shaffer *et al.* (U.S. Patent No. 6,125,108) in view of Truetken (U.S. Patent No. 6,493,324).

VII. Argument

Appellant notes that the filing of this Appeal Brief was believed to be unnecessary in view of the Examiner's indication that a new Office Action would be issued, resetting the time for responding, because the Office Actions of record have failed to address all of Appellant's traversals. Applicant appreciates the Examiner's attempt to address this matter in issuing a new Office Action. However, based upon the Examiner's telephone message of July 2, 2010, Applicant understands that the Examiner's attempt to issue a new Office Action was unsuccessful because a Notice of Appeal had been filed. Accordingly, Applicant has proceeded with this Appeal Brief, which addresses the Final Office Action's failure to answer Applicant's traversals regarding the impropriety of the § 103(a) rejections due to the teaching away and related lack of motivation therein, as is generally applicable to the rejection of all claims. Accordingly, Appellant understands that the rejections must be reversed in view of the (uncontroverted) traversals of record, including those establishing teaching away and related lack of motivation.¹

The rejections are also improper because the Office Actions of record have failed to establish correspondence to all claim limitations, including those directed to programming separate circuits that communicate with a control center (apparently based upon confusion regarding the programming of a control center itself, rather than remote devices). As the record stands, Appellant's traversals identifying the lack of motivation for combining the references as asserted stand uncontested. Moreover, the respective cited references do not correspond as asserted. The following addresses these and other matters in greater detail, while fully incorporating Appellant's traversals of record herein.

¹ Appellant notes that any attempt to bolster the Examiner's arguments at this stage would constitute new grounds of rejection as Appellant would not have had a fair opportunity to respond thereto. *See, e.g., In re Kronig*, 539 F.2d 1300, 1302 (C.C.P.A. 1976); *see also, Hyatt v. Dudas*, 551 F.3d 1307, 1312 (Fed. Cir. 2008) ("a 'ground of rejection' for purposes of Rule 1.192(c)(7) is not merely the statutory requirement for patentability that a claim fails to meet but also the precise reason why the claim fails that requirement.")

A. All Of The § 103(a) Rejections Are Improper Because The (Uncontroverted) Record Establishes The Teaching Away And Related Lack Of Motivation.

The § 103 rejections are improper because the cited references teach away from the Office Action's proposed combination. Consistent with the recent *KSR* decision, M.P.E.P. § 2143.01 explains the long-standing principle that a § 103 rejection cannot be maintained when the asserted modification undermines either the operation or the purpose of the main reference - the rationale being that the prior art teaches away from such a modification. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1742 (2007) ("[W]hen the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be non-obvious.").

As applicable here, Appellant submits that the proposed combination of references would render the respective primary references inoperable because modifying the references to arrive at the Applicant's claimed invention would remove the references' respective configurations involving a central server or router, and replace those configurations with configuration at each of a plurality of respective IP telephony devices. This fundamental change would thus undermine the purposes of both the '269 and '108 references. Under *KSR* and M.P.E.P. § 2143.01, the rejections cannot be maintained.

As discussed above, the Final Office Action failed to contest Appellant's traversals establishing this teaching away, inoperability and related lack of motivation. Appellant noted this failure in its response to the Final Office Action, yet the Advisory Action again ignored these traversals. Appellant's representative telephoned the Examiner on May 26, 2010, to discuss this matter, and understood that the Examiner would withdraw the finality of the Office Action and address Appellant's traversals (thus also avoiding the need to file a § 1.181 petition). Accordingly, as none of the Office Actions of record have addressed this traversal (as consistent with Appellant's June 30, 2009 Response), the uncontroverted record cannot support either of the § 103 rejections. Appellant therefore requests that the rejections of all claims be reversed.

**B. The § 103(a) Rejections Of Claims 15-19 and 26
Are Improper Because The Office Actions Of Record
Have Failed To Establish Correspondence.**

The § 103(a) rejections of claims 15-19 and 26 (in accordance with the first ground of rejection) are improper because the ‘269 reference, alone or in combination with the Swartz ‘694 reference, lacks correspondence to the claimed invention. Neither of the asserted references teaches aspects of the claimed invention directed to a CPU that is responsive to user-interface inputs by programmably configuring (remote) IP telephony devices via an object-oriented programming interface and an IP telephony link, or to a user interface device that is programmed to provide the IP telephony communications configuration information to the CPU (see claim 15). It appears that the Examiner has also improperly attempted to show correspondence by asserting functional correspondence of an overall system to the claimed invention (*e.g.*, a “net result” of control), rather than show correspondence to individual system components (including IP telephony devices) that independently carry out separate functions.

More specifically, the rejections appear to rely upon the Examiner’s continued confusion between the configuration of a central system for routing calls, with the control of such a central system to configure separate processors at different remote IP telephony devices with which such calls are routed. For example, the cited configuration in the ‘694 reference is limited to configuring a host services computer (asserted as the claimed control center), which provides functionality to remote devices. All of the cited portions of the ‘269 reference refer to the control and/or configuration of a telephone server (*see, e.g.*, column 2:52-65), which does not provide teaching or suggestion of controlling and/or configuring an IP telephone as claimed. The call features to which the Examiner has referred are those features executed at a central telephone server, and do not pertain to telephone device configuration as suggested.

Referring to the Examiner’s Response to Arguments in the Final Office Action, the Examiner has misinterpreted the cited references in asserting that “[t]he configuration selections made by the subscriber over the user-interface received by the CPU are used to configure the subscriber’s IP telephony device.” Applicant submits that the portions of the ‘694 reference cited in support of this assertion (Figures 2, 6, 8 and 9, column 3:39-59)

disclose no such limitations, and instead involve inputting configuration selections to a remote central system that routes calls, where the remote system does not program any IP telephony device. For example, the discussed “plug-in” programs (column 3:56), as with the discussed HTML applications, involve user-input functions at a user’s PC to configure a “host services computer.” Nothing in these cited portions makes any mention of the host services computer configuring the user’s PC or any IP telephony device, much less doing so in response to user interface inputs as claimed.

The assertions of correspondence also impermissibly rely upon allegations that the resulting “function” carried out by programming a host computer that hosts remote devices is the same as the function carried out by programming the remote devices themselves. This allegation is untenable as correspondence cannot be established under § 103 simply because certain functions are related (*e.g.*, call forwarding), where those functions are carried out in a completely different manner and by completely different system components, relative to Appellant’s claimed invention. Accordingly, the Office Action’s citation to functional limitations involving a central computer do not establish correspondence to programming and operating devices that are remote from the central controller.

Because neither reference provides correspondence to limitations as discussed above, no reasonable interpretation of the asserted references, taken alone or in combination, can provide correspondence. Accordingly, the § 103 rejection of claim 15, as well as claims 16-19 and 26 that depend from claim 15, is improper and Appellant requests that it be reversed.

C. The § 103(a) Rejections Of Claims 1-14, 20-25 and 27 Are Improper For Failing To Establish Correspondence.

The § 103(a) rejections of claims 1-14, 20-25 and 27 (in accordance with the second ground of rejection) are improper for reasons including those discussed above in Section B, as the cited combination of references fail to disclose limitations directed to programming individual IP telephony devices that communicate with a central server. The rejections are also improper as the ‘108 reference (as was first cited in the Final Office Action), either alone or in combination with the ‘324 reference, fails to correspond to limitations directed to a programmable controller that programs a computer processor circuit at each of a plurality of

telephony devices, responsive to a user's selections as input through a user interface. In contrast, it appears that the cited user service selections are limited to establishing services for the (single) user's own telephone, rather than controlling the configuration of a plurality of telephony devices. It further appears that the cited call feature "enable" functions are carried out at a control unit, and do not mention or otherwise disclose that the control unit programs a computer processor at each of the plurality of IP telephony devices, much less in response to a (single) user's input selections.

Referring to column 4:1-18, the '108 reference describes user-configuration of a user's own IP telephony device (device 20), where configuration options are stored as profile data for use by a server (14) for enabling such features, and thus fails to disclose limitations directed to configuring a plurality of IP telephony devices. The Office Action has not established that the portions of the '108 reference cited in the Response to Arguments ("service profile" and "menu options") are used to "configure the IP telephony device" as asserted. Instead, these services appear to be provided by the server (14). Nothing in the cited references suggests that such functions involve any server-initiated configuration of the IP telephony devices themselves. In other words, enabling services that an IP device can access cannot be equated with actively configuring the IP devices.

Referring to column 8 of the '108 reference, the cited discussion regarding remote call services enablement from an IP telephony device using "device service profile data" that is stored at a "first database of server 14" is similarly unrelated to the claimed invention. This profile data is used by a router 10 to "enable the first set of call services ... in the process of establishing an IP-telephony connection" as described at column 8:19-23, where the services are enabled at the router. The asserted "user service profile" at column 5 similarly refers to a profile that is configured in a "database of the server 14" and used for a "first router 10," and makes no mention of the control and/or configuration of an IP telephone device. These alleged "control" functions involve controlling a server and router, and do not provide any correspondence to "telephone administration control of a plurality of telephony devices" or to configuring "the plurality of IP telephony devices" as asserted or as in any of independent claims 1 or 20 (or as applicable to the claims that depend therefrom). As the secondary '324 reference is cited only as providing a user interface, the '324 reference fails to provide any further correspondence to

the claimed control/configuration of an IP telephony device, which the '108 reference fails to disclose.

Accordingly, the Office Action has failed to establish correspondence to limitations directed to programming a computer processor circuit at each of the plurality of IP telephony devices, based upon a (single) user's configuration option selection. Applicant therefore requests that the § 103 rejection of claims 1-14, 20-25 and 27 be reversed.

VIII. Conclusion

In view of the above, Appellant submits that the rejections of claims 1-27 are improper and therefore requests reversal of the rejections as applied to the appealed claims and allowance of the entire application.

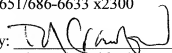
Authority to charge the undersigned's deposit account was provided on the first page of this brief.

Respectfully submitted,

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Dated: July 7, 2010

By:


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APPENDIX OF CLAIMS INVOLVED IN THE APPEAL
(S/N 09/597,704)

1. For use in an IP telephony system in which a control center is communicatively coupled to a plurality of IP telephony devices, a user-programmable communications arrangement comprising:

a user interface to display IP telephony configuration options for at least one of: user control of an IP telephony device, office telephone administration control of a plurality of telephony devices, and system administrator control of telephony system configuration; and
a programmable controller programmed to,

responsive to a user selecting one of the configuration options, program the control center and a computer processor circuit at each of the plurality of IP telephony devices, and

control communications between the control center and the plurality of IP telephony devices.

2. The user-programmable communications arrangement of claim 1, wherein the programmable controller is programmed to, in response to configuration options received from the user interface, communicate programming data to an IP telephony device to program the computer processor circuit at the IP telephony device to respond to an incoming call by announcing the call via the display, the call announce being effected without overtaking currently-running program applications at the IP telephony device, and wherein at least the user interface is part of a programmed computer.

3. The user-programmable communications arrangement of claim 2, wherein the call announce is effected using a locally-installed OOP applet that runs in the background of the computer.

4. The user-programmable communications arrangement of claim 2, wherein the call announce displays user control options including at least one of: caller ID, speaker phone, answer, forward to voicemail, hold, and call termination.
5. The user-programmable communications arrangement of claim 1, wherein the user interface includes a graphic user interface (GUI).
6. The user-programmable communications arrangement of claim 1, wherein the programmable communications arrangement includes one of the plurality of IP telephony devices.
7. The user-programmable communications arrangement of claim 1, wherein the controller is programmed to access personal contact information.
8. The user-programmable communications arrangement of claim 7, wherein the personal contact information is arranged in a searchable database accessible by the controller, the database being accessible via user-defined shuffle-search statements.
9. The user-programmable communications arrangement of claim 1, wherein the controller is programmed to provide a control interface for system administration control of an IP telephony network, the interface being programmed to provide at least one of: IP telephony system configuration and system status information.
10. The user-programmable communications arrangement of claim 9, wherein the IP telephony system status information includes at least one of: IP address assignment information for telephony devices, user-access security control level settings, current telephony device hardware settings, display settings for the controller, and telephony device location information.

11. The user-programmable communications arrangement of claim 9, wherein the controller is programmed to control at least one of: telephony device address assignment, user-access permissions, system report generation, display settings for the controller, voice mail parameters, IP telephony device hardware configuration, system backups, call routing protocol, call accounting, email configuration settings and call logging.

12. The user-programmable communications arrangement of claim 1, wherein the controller is programmed to configure the control center and the plurality of IP telephony devices using OOP for providing user-selected IP telephony configuration information to the control center.

13. The user-programmable communications arrangement of claim 1, wherein user control of an IP telephony device includes active call control and call receive settings including at least one of: speaker phone activation, call answer, call forward to voicemail, call forward to another number or IP telephony address, call hold, call termination, display of caller ID, speed dial, call transfer, redial, voicemail forwarding, voicemail messaging, multi-party calling call muting, video control, and remote access control for remote access to telephony services.

14. The user-programmable communications arrangement of claim 1, wherein each of the plurality of IP telephony devices includes a CPU, and wherein the user interface and controller are further programmed to:

provide user-selected email configuration information to a control center
communicatively coupled to each CPU;

display a control interface for at least one of: user control of email configuration, office administration control of the plurality of CPUs, and system administrator control of email system configuration; and

the email configuration information being selected to control communications between, and to programmably configure, the control center and the plurality of CPUs.

15. A user-programmable communications arrangement comprising:
a user-interface device having a display, the device being programmed to provide IP telephony communications configuration information to a user via the display and to communicate IP telephony communications configuration selections from the user to a CPU;
and
a programmable CPU communicatively coupled to the user interface device and having an OOP interface coupled to an IP telephony communications link, the CPU being programmed to receive the IP telephony communications configuration selections from the user-interface device and, in response to the received selections, programmably configure selected IP telephony devices of an IP telephony communications system via the IP telephony communications link.
16. The user-programmable communications controller of claim 15, wherein the CPU is programmed to control the scope of IP telephony communications configuration selections that can be made by a particular user.
17. The user-programmable communications controller of claim 15, wherein the IP telephony system includes a memory storage device having user-access configuration data, wherein the CPU receives the configuration data for controlling the scope of configuration selections that can be made by a particular user.
18. The user-programmable communications controller of claim 17, wherein the memory storage device is programmed to send display information to the user-interface device using OOP, the display information including available IP telephony communications selections.
19. The user-programmable communications controller of claim 15, wherein the user-interface device communicates the configuration selections using OOP.

20. A user-programmable communications control system for controlling a communications network using OOP code, the control system comprising:

a plurality of telephony devices coupled to an IP communications link and configurable to communicate IP telephony data;

a computer station having an OOP interface, the station being programmed to display communications information including telephony communications information and to provide communications control selections including telephony control selections to the IP communications link; and

a programmable communications server having an IP telephony switch and an OOP interface coupled to the IP communications link and programmed to receive the communications control selections, the programmable communications server being programmed to control the communications network and configure a computer processor circuit at each of the plurality of telephony devices, responsive to the selections received through the OOP interface.

21. The user-programmable communications control system of claim 20, wherein the scope of communications control selections that can be made at the computer station is controlled by the programmable communications server based on a predefined user-access permission level.

22. The user-programmable communications control system of claim 20, further comprising a plurality of the computer stations, wherein programmable communications server is programmed to receive communications control selections from each of the plurality of computer stations.

23. The user-programmable communications arrangement of claim 1, further including the control center, wherein the programmable controller is programmed to configure the control center by providing configuration information to control interactions between the control center and each of the plurality of IP telephony devices, the plurality of IP telephony devices being remote from the programmable controller.

24. The user-programmable communications arrangement of claim 1, further including the control center, wherein the programmable controller is programmed to configure each of the plurality of IP telephony devices via communications with the control center.

25. The user-programmable communications arrangement of claim 1, wherein the user interface and the programmable controller are part of a programmed computer used in an IP telephone.

26. The user-programmable communications arrangement of claim 15, wherein the CPU is programmed to control selected functions of selected IP telephony devices of an IP telephony communications system by configuring a plurality of IP telephony devices.

27. The user-programmable communications control system of claim 20, wherein the computer station provides communications control selections input by an administrator user via the OOP interface in response to the user meeting a predefined user-access permission level, and

the programmable communications server controls all of the plurality of telephony devices in response to selections input at the OOP interface of the computer station by the administrator user.

APPENDIX OF EVIDENCE

Appellant is unaware of any evidence submitted in this application pursuant to 37 C.F.R. §§ 1.130, 1.131, and 1.132.

APPENDIX OF RELATED PROCEEDINGS

As stated in Section II above, Appellant is unaware of any related appeals, interferences or judicial proceedings.